ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Emergency Alert System	)	EB Docket No. 04-296
	)	
	)	

To: The Commission

COMMENTS OF THE CALIFORNIA BROADCASTERS ASSOCIATION

The California Broadcasters Association ("CBA"), by counsel, hereby submits its Comments in response to the Commission's *Notice of Proposed Rulemaking* ("*NPRM*")[1] in the above-captioned matter.

1. The CBA is an association whose members comprise substantially all of the radio and television broadcast stations licensed to communities located in California. Based upon its own extensive experience, outlined at page 7 herein, the CBA is particularly interested in the continued development and long-term maintenance of an Emergency Alert System ("EAS") that promises to function in the public interest for decades to come. To that end, CBA believes that EAS should remain the backbone of our primary public safety system, that federal guidance and oversight is essential, that standardized protocols will enhance utility and foster seamless integration of new technologies into the existing system, that strong State Emergency Communications Committees ("SECC"s) and Local Emergency Communications Committees ("LECC"s) are crucial to the growth and future utility of the system, and that all of these approaches will promote widespread

[1] *Notice of Proposed Rulemaking*, FCC 04-189, released August 12, 2004 ("*NPRM*"); 69 Fed. Reg. 52843-52847 (August 30, 2004). Comments are due within sixty (60) days of Federal Register publication, i.e., by October 29, 2004. Accordingly, these Comments are timely filed.

and meaningful voluntary participation by broad segments of the communications industry so as to reach as much of the citizenry as feasible.

2. **The Overall Goals of EAS** – The Commission's experience over the past decade has proven time again that during emergencies effective public warnings save lives, prevent injuries, reduce property losses and control fear. These results are even more crucial in our present times. This proceeding should not become bogged down or sidetracked into detailed examination of technologies that could be employed in EAS nor attempts to assess hypothetical advantages of one technology over another. Such delay would vastly disserve the public, which relies upon the availability of a viable system. Rather, the focus of this proceeding should be directed toward improvement of the current EAS to foster a robust yet flexible structure that will accommodate present and future needs.

3. Effective public warnings require systems and procedures that:

- Reach those at risk in a timely fashion;
- Deliver simple, understandable and useful warning messages;
- Maximize recipient confidence in, and thus response to, warning messages; and
- Minimize the occurrence and impact of failures and false alarms.

In order to achieve these goals, focus must be directed toward the development of open structures that will embrace future technologies without threatening the basic nature of EAS or disrupting its continued service to the American people.

4. **The Need for Federal Oversight** – While California has been a leader in implementing and maintaining an effective state-wide EAS system that functions equally well on a local level, other states, and many jurisdictions within states, have yet to realize or even decide

upon an EAS plan. Having such inert gaps hinders the overall efficacy of the EAS system and the public's confidence in, and willingness to rely upon, EAS as a primary resource for emergency information. (Of course, the greatest impact is upon the residents of such areas, who are left without the coordinated support and deployment of resources which EAS makes possible.)

5. CBA agrees with the Partnership for Public Warning ("PPW") that a single federal entity, most likely the Department of Homeland Security ("DHS"), should take the necessary lead to administer EAS as the national public warning program and coordinate local levels of management and operation. Without centralized leadership, the program will be spotty and ineffective in fulfilling its needed role as a primary resource for all emergency information and resources. Given that the government's emergency preparedness and response resources currently reside largely within DHS and the Federal Emergency Management Agency ("FEMA," which operates within DHS), FEMA and DHS are likely the federal agencies best equipped to manage this process. Given its technical expertise and general oversight responsibilities over EAS, however, the Commission is an essential partner in this process and should work cooperatively with DHS and FEMA through an appropriate memorandum of understanding ("MOU") that should also include the National Weather Service ("NWS").[2]

6. The FCC will continue to serve an important role in this process, as it is uniquely equipped to analyze and address technological issues upon which EAS necessarily depends. The Commission's rules already provide that state and local "plans must be reviewed and approved by the Chief, Technical and Public Safety Division, Enforcement Bureau, prior to

[2] The Commission, currently implements EAS at the national level in conjunction with FEMA and the NWS with the parties' respective roles based on a 1981 MOU between FEMA, NWS, and the Commission, on a 1984 Executive Order, and on a 1995 Presidential Statement of Requirements. *See NPRM*, FCC 04-189 at ¶ 9.

implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation"[3] but contain no mechanism for any monitoring of the implementation and functioning of the EAS itself. It is appropriate and essential that the FCC implement an effective federal oversight system such that EAS performance can, on an ongoing basis, be evaluated and assessed. That evaluation and assessment must consider not only system performance, but whether and to what extent emergency alerts reach the public and whether and to what extent the public acts on those alerts.

7. The Commission is correct to heed the jointly held position of the Media Security and Reliability Council ("MSRC") and the PPW that EAS ought to be upgraded and not replaced.[4] The CBA shares this view. As the PPW notes, "it would be difficult [at best] to replace or rebuild such a capability today at a reasonable cost."[5] While it is clear that EAS is not without flaws, and will require considerable upgrading to retain its relevance to serve the American public in the future, it is fundamentally a sound system, conceived as an open architecture to accommodate future developments. Broadcasters' investment in and experience with EAS suggest that it be retained and improved rather than replaced with yet another system whose capabilities are unknown and whose inevitable problems are yet to be determined and will need to be solved. EAS is a present reality and should continue in use, even while being improved and modified for future needs.

8. As the Commission notes, the EAS is "a hierarchical, trickle down distribution system."[6] EAS essentially relies on a daisy-chain system whereby Primary Entry Point ("PEP")

---

[3] Section 11.21 of the Commission's rules, 47 C.F.R. § 11.21
[4] *NPRM* at ¶ 21.
[5] *Id, citing PPW 2004 EAS Assessment* at 28.
[6] *Id* at ¶ 21.

stations serve as the entry point for alerts and are monitored by Local Primary One stations that, in turn, are monitored by other stations in their area and so on down the line. Any break in the chain can severely compromise the system and result in the loss of life and property.

9. As an initial step, the Commission should conduct an analysis to ascertain where existing breaks in the chain exist. The Commission must have a full understanding as to the extent of the problem in order to take corrective action. In the *NPRM*, the Commission describes a litany of avenues for breaks in the chain.[7] For example, in a number of instances non-PEP stations cannot monitor a signal because of terrain, because the station is too remote from a PEP station, or because the PEP station simply does not reach the large area it is supposed to cover.[8] The Commission must act to ensure that the system is not compromised by breaks in the chain – as an immediate remedial measure, gaps should be filled by the addition of PEP stations to the system so that each entry point in the chain is able reliably to receive alerts and that all such alerts are received by all stations and cable systems downstream.

10. In 1981, the functionality and impact of the former Emergency Broadcast System was enhanced by an MOU among the FCC, FEMA, NOAA and other agencies having specialized responsibility for public safety. That MOU was effective in coordinating the agencies' respective areas of expertise, avoiding needless overlap of effort or conflicts between separate plans for implementation, and ensuring that, among them, all areas of significant concern were meaningfully addressed. A similar MOU or other means of coordination among responsible federal agencies should be sought for EAS. Once the basic structure is in place, it

[7] *Id* at ¶ 27.
[8] *Id.*

can be expanded to cover state and local levels, including both public and private warning systems.

11. To the extent that any of the foregoing requires legislation, it should be pursued on a bi-partisan basis as soon as possible. While procedural delays are inevitable in implementing an improved EAS, the pressing need for an effective national, state and local emergency warning plan cannot be overstated in our current times of heightened security concerns and should be sought as a matter of top priority.

12. The development of an effective federal oversight plan provides an easy answer to the question of whether "EAS, in the current communications universe, [is] outdated.[9] Though there may well be current (and future) communications technologies that can and should be integrated into EAS, that by no means warrants adoption of a drastic "throw the baby out with the bathwater" approach. Effective warning delivery should involve the coordinated and consistent use of multiple channels of communications to the exclusion of none. There is no need to start all over again – EAS provides a basic structure already in place that can be upgraded as needed.

13. **State and Local Levels** – The implementation of effective oversight administration should not be at the expense of the SECCs and LECCs. On the contrary, SECCs and LECCs are critical to the functioning of the system, serving to facilitate the input and distribution of essential information to the public. In California, the dedicated volunteers that serve on the SECCs and LECCs are an indispensable element in the process, serving as a key interface with state and local levels of emergency management. EAS works well in California because its SECCs and LECCs are strong.

[9] *NPRM*, FCC 04-189 at ¶ 4.

14. California is proud of its leadership role in implementing meaningful and effective plans at both the state-wide and local levels. The California State EAS Plan can be activated by the Governor as the Chief Emergency Action Officer of the State through a number of activation points whenever there is an imminent serious threat to life and/or property over such an extended area that centralized activation and coordination of emergency measures and resources is needed. The State Plan is actively administered by an Executive Staff comprised of a Chair and three Vice Chairs. California is divided into 23 Local Areas, each of which has its own Plan and is part of the State Plan. LECCs are responsible for each Local Area Plan, with a Chair and Vice Chair appointed by the SECC Chair. Activations and tests may be initiated only by designated officials in accordance with the State and Local Plans. Area threats triggering EAS include severe storms and their aftermaths, chemical and hazardous material spills and releases, dam failures, transportation accidents, seismic activity, fire, volcanic eruption, nuclear accidents, terrorist incidents, armed aggression (including threats to military bases) and AMBER alerts.

15. The California EAS is supplemented by an Emergency Digital Information Service ("EDIS") Plan to transmit detailed information to the news media in text form. EDIS bulletins are assigned one of five priority levels by its sender and can be targeted to any of 14 geographic zones. Initially modeled on wire service standards in 1990, EDIS now uses a network of digital radio transmitters and satellite receivers and has been expanded to include paging, email, audio, graphics and other enhancements. Availability has been extended to anyone via the Internet, so as to foster distribution of detailed information to citizens with special needs or who are otherwise inaccessible. Systems such as California's EDIS are not intended to replace, but rather to complement and enhance, the utility of EAS.

16. While California is justifiably proud of its EAS and EDIS systems, this is not true, regrettably, for all states and localities. The CBA believes the Commission erred when it decided that it will no longer appoint SECC chairs. A lack of a chain of command and responsibility leads to diminished accountability. California's own experience demonstrates that well-funded and -accountable SECCs and LECCs will enhance the EAS. The Commission is uniquely positioned to serve as a clearing-house for sharing and spreading the success of SECCs and LECCs. It should compile and circulate training materials. It should publicize achievements in order to foster a sense of reward and a desire for others to excel. It should convene regional conferences at which experiences such as California's can be shared, frustrations aired, resources pooled and problems solved.

17. Even as the EAS is being strengthened through strong state and local input and participation, private industry should be encouraged to join the effort on all levels, with the inducements of both garnering public goodwill stemming from recognition of its efforts and of opportunities to benefit financially from contributions to the overall effort. Industry will be primary contributors to the future of EAS with technological innovation that historically has always come from the private sector and has been driven by competitive forces. The partnership between government and industry, in turn, will be the final stage of a truly comprehensive system that will render public service on a wide variety of levels.

18. **The Role of Technology** – The EAS is a legacy system, but it is one that can and should be built upon. As new technologies emerge, they can enhance and upgrade the technology already in place. This needs to be done as an on-going project and commitment, so that there is no sudden lapse in service or confusion caused by sudden or jarring transitions.

19. The integration of new communications technologies into the EAS must be accomplished by the adoption of a Common Alerting Protocol ("CAP"), *i.e.,* a standard method to collect and relay instantaneously and automatically all types of hazard warnings and reports locally, regionally and nationally that can be inputted into a wide variety of dissemination systems. As the Commission notes, "the Organization for the Advancement of Structured Information Standards ("OASIS"), a not-for-profit, international consortium that addresses the development, convergence and adoption of e-business standards, has adopted the CAP as an OASIS standard."[10] The CAP format's compatibility with emerging and existing formats, such as web service applications, NWS' SAME, and the EAS protocol and its offering of a variety of enhanced capabilities makes it an effective interface through which an emergency manager can access multiple emergency notification services, including EAS. Its capabilities can increase warning effectiveness while reducing costs and complexity. The fact that government agencies such as DHS and NWS have already implemented CAP stands as a strong endorsement of its efficacy.

20. As part of their centralized role, the FCC and FEMA are ideally situated to assure adoption and implementation of a CAP. While certain aspects of this process can be shared or delegated through an appropriate MOU, efficiency and speed seems to demand that one agency be empowered to fulfill this essential function. As part of this proceeding, the Commission should investigate whether it has jurisdiction to proceed along such lines and, if not, to seek such authority through appropriate legislation.

---

[10] *Id* at ¶ 33. *See also Organization for the Advancement of Structured Information Standards (OASIS), Emergency Management Technical Committee; "Common Alerting Protocol v 1.0,"* (12 August 2003).

21. As part of its oversight of the EAS, the FCC, in partnership with industry, should constantly evaluate other communications technologies and their usefulness to the EAS. EAS is presently supplemented by a variety of other technologies that have been deployed by local jurisdictions and private industry, including:

- Sirens and public-address systems;
- Telephone notification systems;
- Programmable highway signs and other public display systems;
- Travelers Information Service low-power radio transmitters;
- Wireless systems utilizing pagers, cell phones and other devices; and,
- Internet-based alerting systems using e-mail, instant messaging, web and other protocols.

22. In addition to the continued reliance on radio and television broadcast stations and cable systems, the goal should be to include in a coordinated fashion all technologies, including but not limited to direct broadcast satellites and digital radio and television, that can add to an efficient and effective EAS. The analysis cannot overlook the facts that no one technology can reach everyone under all circumstances and that any single technology can be vulnerable to deliberate attack or unexpected technical failures. For that reason alone, integration and coordination among a wide variety of technologies is essential to the continued safety of the American public. Moreover, as technology continues to evolve, citizens' reliance upon the outcome evolves as well. Less than a generation ago, landline telephones were nearly universal; now Americans tend to rely increasingly upon mobile technology. In the same time-frame, the Internet has emerged as a primary source for all types of information. The trend is most acute among the youngest generation and therefore can only be expected to accelerate in the future.

Therefore, the ability of EAS to incorporate the latest technology is critical to its continued relevance and success.

23. Even though much emphasis should be upon integration of evolving technologies, the traditional media remain essential, especially since they, too, are evolving into such areas as multiple channels and digital information Thus, as an immediate step, the Commission can move to expand nationwide coverage by adding the national broadcast and cable networks to the system. Addition of these networks can be accomplished at little to no cost as broadcast stations and cable systems affiliated with these networks would be able to receive nationwide (and perhaps regional) messages on their existing receivers at no additional cost. Addition of the NOAA satellite system to the network would also ensure nationwide coverage at little to no cost, since nearly every radio and television station already has the capability to receive NOAA. With its ability to regionalize and localize, NOAA can be a valuable addition to the system at both state and local levels.

24. **The Voluntary Nature of EAS** – The NPRM notes that EAS participation at the state and local levels, while encouraged, is merely voluntary and questions the continued appropriateness of "permissive state and local EAS participation ... in today's world."[11] CBA firmly believes that state and local EAS participation should continue to be voluntary.

25. While state and local officials are perhaps in the best position to recognize potential emergency situations and to desire broad dissemination of their messages, broadcasters have served their communities and regions with dedication and have amassed significant experience with EAS in determining those situations appropriate to their audiences. Clearly, not

[11] *NPRM* at ¶ 3.

every potential warning is universally appropriate. Factors such as language, location, culture and demographics are all significant in assessing messages that should be relayed to a given audience. Flooding the airwaves with marginally relevant information will only serve to diminish the overall impact and deflect attention from truly relevant warnings and instructions. Only a broadcaster familiar with its audience is able to apply its experience to determine the appropriate mix and to prioritize demands upon viewers' and listeners' attention.

26. Though the EAS has never been called upon to perform its national security function, and though participation at the state and local level is voluntary, the system is activated at the state and local level often in support of local officials to alert and inform local populations about various local threats including environmental and other emergencies. The hugely successful record already compiled by the voluntary EAS system speaks to the continued effectiveness of a system that remains voluntary.[12] Broadcasters are keenly sensitive to public scrutiny of their performance and their responsiveness to community needs; none would risk losing that good will by failing to devote conscientious attention to relaying all relevant emergency information to its audience.

27. Although participation by broadcasters should remain voluntary, they necessarily depend upon the availability of information to be conveyed. Thus, meaningful contributions by states and localities cannot be left to the current scheme, which has left entire states without plans and as a consequence broadcasters and others lack the input upon which distributors of emergency messages necessarily rely. The FCC (or other agencies with which it will coordinate) need the authority to require that states submit plans for approval and then proceed to implement

[12] The Commission used to issue regular public notices that listed an impressive number and variety of activations of the EBS, but that seems to have been discontinued.

them, both state-wide and locally. CBA is convinced that all states are willing to work out the specific aspects of implementation with localities and broadcasters, but the first step of formulating and adopting a plan cannot be delayed any longer and therefore should be mandated by the FCC. Appropriate legislation should be sought without delay.

28. **Conclusion** – For the reasons discussed herein, the California Broadcasters Association urges the Commission to preserve EAS and to devote the necessary resources to ensuring its further development and utility for the future. CBA submits that federal oversight of a voluntary system, with standardized protocols administered through strong SECCs and LECCs, will ensure public safety both now and for future generations.

Respectfully Submitted:

CALIFORNIA BROADCASTERS ASSOCIATION

By: _____
Gregg P. Skall
Howard Barr
Peter Gutmann
Its Attorneys

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company
1401 I Street, NW
Washington, DC 20005
(202) 857-4400
October 29, 2004